

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Refer Reply To:

CC:INTL

PLR-158858-06

Date:

July 3, 2007

Taxpayer =

Subsidiary X =

Branch Y =

Acquirer M =

Tax Year 1 =

Tax Year 2 =

Year 3 =

Country A =

CPA Firm 1 =

CPA Firm 2 =

Dear :

This is in response to a letter dated December 22, 2006, from your authorized representative requesting an extension of time under Treas. Reg. § 301.9100-3 for Taxpayer to file elections and agreements under Treas. Reg. § 1.1503-2(g)(2)(i) with

respect to dual consolidated losses (as defined in Treas. Reg. § 1.1503-2(c)(5)) incurred by Branch Y in Tax Years 1 and 2. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Summary of Facts

For each tax year in question, Taxpayer filed a consolidated return that included the activities of Subsidiary X. Branch Y is a branch of Subsidiary X located in Country A. Dual consolidated losses attributable to Branch Y were incurred in Taxable Years 1 and 2.

Taxpayer's finance and accounting department personnel were responsible for tax related matters, including the filing of Taxpayer's consolidated return for Tax Year 1. In addition, Taxpayer retained CPA Firm 1 to prepare Taxpayer's Tax Year 1 return based on information provided by Taxpayer's personnel. No Treas. Reg. § 1.1503-2(g)(2)(i) agreement was included with Taxpayer's Tax Year 1 return.

Acquirer M acquired all of the stock of Taxpayer during Tax Year 2. Taxpayer retained CPA Firm 2 to prepare Taxpayer's Tax Year 2 return. Personnel from Taxpayer, Acquirer M, and one of Acquirer M's subsidiaries were responsible for providing the information necessary to complete Taxpayer's Tax Year 2 return. No Treas. Reg. § 1.1503-2(g)(2)(i) agreement was included with Taxpayer's Tax Year 2 return.

Internal accounting personnel, in conjunction with CPA Firm 2, discovered the failure to properly elect relief under Treas. Reg. § 1.1503-2(g)(2) in late Year 3. Taxpayer is not currently under IRS examination.

Representations

Taxpayer has made the following representations:

1. Taxpayer met all of the eligibility requirements to file an election in Tax Year 1 under Treas. Reg. § 1.1503-2(g)(2)(i) with respect to dual consolidated losses incurred in that year and attributable to Branch Y.
2. Taxpayer met all of the eligibility requirements to file an election in Tax Year 2 under Treas. Reg. § 1.1503-2(g)(2)(i) with respect to dual consolidated losses incurred in that year and attributable to Branch Y.

3. Taxpayer, through its wholly-owned Subsidiary X, had activities in Country A that constituted a foreign branch within the meaning of Treas. Reg. § 1.367(a)-6T.
4. The income tax laws of Country A do not deny the use of losses, expenses, or deductions of Branch Y to offset income of another person because it is also subject to income taxation by another country on its worldwide income or on a residence basis.
5. Branch Y comprises the only business activity conducted by Taxpayer or any entity affiliated with Taxpayer in Country A.

Law and Analysis

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. § 301.9100-3, to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 1.1503-2(g)(2) describes the actions taxpayers must take to elect certain relief from the general limitation contained in Treas. Reg. § 1.1503-2(b) on the use of dual consolidated losses to offset income of a domestic affiliate.

The elective relief described in Treas. Reg. § 1.1503-2(g)(2) constitutes a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the rules set forth in Treas. Reg. § 301.9100-3(a).

Conclusion

Based on the facts and representations submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file for the above described elective relief.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible for the elective relief of Treas. Reg. § 1.1503-2(g)(2). Treas. Reg. § 301.9100-1(a). For example, a taxpayer that is subject to mirror legislation enacted by a foreign country may be ineligible to file for elective relief pursuant to Treas. Reg. § 1.1503-2(c)(15)(iv).

A copy of this ruling letter should be attached to the elective relief filings that are the subject of this ruling.

This ruling is directed only to the taxpayer who requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent. No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, copies of this ruling letter are being furnished to Taxpayer's authorized representatives.

Sincerely,

John E. Hinding
Assistant to the Branch Chief
CC:INTL:Br6

Enclosure:
Copy for 6110 purposes

cc: